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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

RAMSEY NAJOR, Plaintiff and Respondent, v. DAVID BLAKE, Defendant and Appellant.	D052684 (Super. Ct. No. 37-2007-00054463-CU-OR-NC)

APPEAL from an order of the Superior Court of San Diego County, Lisa Guy-Schall, Judge. Affirmed.

I.

INTRODUCTION

Defendant David Blake appeals from an order overruling his demurrer to plaintiff Ramsey Najor's complaint. Najor filed an action against Jay Walker, who is not a party to this appeal, and Blake, alleging that Walker fraudulently transferred his house to Blake. Blake is an attorney who represented Walker in a lawsuit between Najor and Walker.

Blake demurred to Najor's first amended complaint on the ground that Najor failed to obtain a pre-filing order under Civil Code[1] section 1714.10. Section 1714.10 ostensibly requires a plaintiff to obtain a pre-filing order prior to moving forward with an action that alleges a civil conspiracy between an attorney and his client.[2] Blake also demurred to Najor's amended complaint on the ground that the complaint failed to state a cause of action. Blake argued that the complaint was legally insufficient to allege a cause of action for fraudulent conveyance, and that the complaint was barred by the litigation privilege. The trial court overruled Blake's demurrers.

On appeal, Blake argues that the trial court erred in overruling his special demurrer[3] based on the requirements of section 1714.10. He further contends that the trial court should have sustained his demurrer to Najor's complaint on the ground that Najor failed to state a cause of action because, Blake argues, (1) the transfer of property

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1 Subsequent statutory references are to the Civil Code unless otherwise indicated.

2 As we explain later in this opinion, following a legislative amendment to section 1714.10, there is no circumstance in which a plaintiff must actually obtain a pre-filing order under that section, either because the action meets one of the two exceptions identified in section 1714.10, or because the cause of action is not viable as a matter of law, due to the agent immunity rule. (See *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 818 (*Berg*); see also *Pavicich v. Santucci* (2000) 85 Cal.App.4th 382, 394-396 (*Pavicich*).)

3 "Demurrers for *failure to state a cause of action* or defense, or *for lack of subject matter jurisdiction*, are commonly referred to as 'general' demurrers. All other grounds for demurrer are referred to as 'special' demurrers. The major distinction is that grounds for general demurrer are never waived (except those based on the statute of limitations; see ¶*7:50*), whereas all other grounds are waived unless timely raised. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2007) ¶ 7:37, p. 7-18.)

by a client to an attorney cannot constitute a fraudulent transfer, as a matter of law; (2) there was adequate consideration for the transfer, such that it could not have been fraudulent; and (3) the litigation privilege bars Najor's action.

We conclude that the trial court did not err in overruling Blake's demurrer based on section 1714.10, because Najor is alleging claims that are outside the scope of section 1714.10. We further conclude that Blake's additional arguments in favor of his general demurrer are not cognizable in this appeal, because an order overruling a general demurrer is not an independently appealable order. Only the trial court's ruling on the special demurrer based on section 1714.10 is appealable at this stage of the litigation. We affirm the trial court's order overruling Blake's special demurrer to Najor's amended complaint.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual background*

Najor and Walker were involved for several years in litigation concerning Walker's conduct with respect to Najor's company, Bio Prime Enterprises (Bio Prime). Blake represented Walker in this litigation. On March 22, 2006, a United States bankruptcy court found that Walker intentionally interfered with Bio Prime's (and Najor's) economic relationship with a third party, and determined that Walker "does owe

a debt to Bio Prime for his conduct."[4] The bankruptcy court further determined that Walker's debt to Bio Prime was nondischargeable in Walker's bankruptcy action.

On January 30, 2004, approximately two years prior to the bankruptcy court's ruling, Blake recorded a deed of trust on Walker's house in Carlsbad, securing Walker's debt to Blake for legal services.

On May 8, 2006, Blake recorded a second, nearly identical deed of trust. On June 12, 2006, the bankruptcy court entered judgment in favor of Bio Prime, against Walker, in the amount of $187,794.

B. *Procedural background*

On July 18, 2007, Najor filed a complaint against Walker and Blake, alleging that the two had conspired to fraudulently transfer Walker's property to Blake. Blake demurred to Najor's complaint on the ground that Najor had failed to obtain a pre-filing order permitting the filing of the complaint, pursuant to the requirements of section 1714.10. Blake also generally demurred on the ground that Najor failed to state a cause of action. The trial court sustained Blake's demurrers, but allowed Najor to amend his complaint.

Najor filed an amended complaint in which he changed the allegations of the complaint by, among other things, deleting any reference to a "conspiracy" between Blake and Walker. The amended complaint alleges that Walker's transfer of his property

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[4] The parties had earlier stipulated that the "amount of the debt, if one was found to exist, was . . . $187,794.00."

to Blake was a fraudulent transfer, and seeks to void the transfer so that Najor can collect his judgment against Walker. In addition to his cause of action to set aside the alleged fraudulent transfer, Najor also asserted causes of action for declaratory relief and for an accounting regarding the amounts Walker owes to Blake for legal fees, to the extent those fees relate to the transferred property. Blake specifically and generally demurred to the amended complaint on essentially the same grounds presented in his demurrer to the original complaint. This time, the trial court overruled the demurrers.

Blake filed a timely appeal from the trial court's overruling of his demurrers.

III.

DISCUSSION

Blake contends that the trial court erred in overruling his special demurrer to Najor's complaint because, he maintains, Najor was required to obtain a pre-filing order under section 1714.10. Section 1714.10 provides in relevant part:

> "(a) No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action. . . .
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> "(b) Failure to obtain a court order where required by subdivision (a) shall be a defense to any action for civil conspiracy filed in violation thereof. The defense shall be raised by the attorney charged with civil conspiracy upon that attorney's first appearance by demurrer, motion to strike, or such other motion or application as may be appropriate. Failure to timely raise the defense shall constitute a waiver thereof.

> "(c) This section shall not apply to a cause of action against an attorney for a civil conspiracy with his or her client, where (1) the attorney has an independent legal duty to the plaintiff, or (2) the attorney's acts go beyond the performance of a professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance of the attorney's financial gain.
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> "(d) This section establishes a special proceeding of a civil nature. Any order made under subdivision (a), (b), or (c) which determines the rights of a petitioner or an attorney against whom a pleading has been or is proposed to be filed, shall be appealable as a final judgment in a civil action."

Blake maintains that because Najor essentially alleges that Blake entered into a civil conspiracy with Walker, based on Blake's representation of Walker in the prior litigation, section 1714.10 applies.

Blake argues, in the alternative, that the trial court should have granted his general demurrer because Najor's complaint is legally insufficient to allege a cause of action for fraudulent conveyance, and is barred as a matter of law by the litigation privilege. We conclude that Blake's arguments are unavailing.

A. *Appealability*

Although the parties do not dispute the fact that the trial court's order overruling Blake's special demurrer based on 1714.10 is directly appealable, we address the appealability of the order overruling the special demurrer in light of Blake's challenge to the court's overruling of his general demurrer, the appealability of which we address in part III.D., *post*, of this opinion. Although, in general, orders overruling demurrers are not directly appealable (*San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 912-913), subdivision (d) of section 1714.10 permits a direct appeal from "[a]ny

order made under subdivision (a), (b), or (c) [of section 1714.10] which determines the rights of a petitioner or an attorney against whom a pleading has been or is proposed to be filed." Thus, Blake may appeal the trial court's order that Najor need not comply with section 1714.10.

B. *Additional background regarding the effect of section 1714.10*

Although Blake argues that Najor was required to comply with the requirements of section 1714.10 by requesting that the court issue an order permitting him to go forward with his action against Blake, a number of courts have reached the conclusion that the current version of section 1714.10 exempts from its coverage the only viable attorney-client conspiracy claims that a plaintiff could bring. (See *Pavicich, supra*, 85 Cal.App.4th at pp. 394-396; see also *Panoutsopoulos v. Chambliss* (2007) 157 Cal.App.4th 297, 304-306 (*Panoutsopoulos*); *Berg, supra*, 131 Cal.App.4th at p. 818.) The court in *Pavicich, supra*, 85 Cal.App.4th at pages 390-394, detailed the history of section 1714.10 and related case law in explaining its conclusion that no petition is ever necessary under the current version of section 1714.10.

"Section 1714.10 had its genesis in *Wolfrich Corp. v. United Services Automobile Assn*. (1983) 149 Cal.App. 3d 1206 (*Wolfrich*). In *Wolfrich*, an insured sued an insurance company and the attorneys representing the insurance company. According to the insured, the insurer and its attorneys had conspired to violate section 790.03 of the Insurance Code." (*Pavicich, supra*, 85 Cal.App.4th at p. 390.) The *Wolfrich* court concluded that although the attorneys could not be sued for violating the Insurance Code

because they were not in the insurance business, they could be liable for conspiring with their clients to violate the Insurance Code. (*Ibid*.)

The *Pavicich* court continued:

> "In an effort to limit the holding in *Wolfrich*, the Legislature in 1988 enacted section 1714.10. [Citations.] Former section 1714.10 narrowed *Wolfrich* by protecting against frivolous conspiracy claims brought against attorneys and their clients. The statute achieved this goal by requiring a prefiling judicial determination of a reasonable probability that the conspiracy claim was meritorious. . . .[¶] As originally enacted in 1988, section 1714.10, provided, in pertinent part, that 'No cause of action against an attorney based upon a civil conspiracy with his or her client shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes a claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action. . . .' [Citation.]" (*Pavicich, supra,* 85 Cal.App.4th at pp. 390-391.)

The year after section 1714.10 was enacted, in *Doctors' Company, et al. v Superior Court of Los Angeles County* (1989) 49 Cal.3d 39 (*Doctors' Co*.), the Supreme Court considered the issue that had been presented in *Wolfrich*, and concluded that *Wolfrich* had been incorrectly decided. (*Pavicich*, *supra*, 85 Cal.App.4th at p. 391.) "In reaching its decision, the court articulated the basic rule that a conspiracy cause of action cannot lie 'if the alleged conspirator, though a participant in the agreement underlying the injury, was not personally bound by the duty violated by the wrongdoing and was acting only as the agent or employee of the party who did have that duty.' [Citation.]" (*Ibid*.) Because the attorney and expert defendants *in Doctors' Co.* "were acting merely as agents of the insurer, and 'not as individuals for their individual advantage,' . . . they could not be liable for conspiracy." (*Pavicich, supra,* 85 Cal.App.4th at p. 391.) In reaching this

conclusion, the *Doctors' Co*. court identified two situations in which attorneys *could* be liable for conspiring with their clients: (1) when the attorney "conspires to cause a client to violate a statutory duty peculiar to the client" and acts "not only in the performance of a professional duty to serve the client but also in furtherance of the attorney's own financial gain;" and (2) when an attorney violates "the attorney's own duty to the plaintiff." (*Doctors' Co., supra*, 429 Cal.3d at pp. 46-47.)

Two years after *Doctors' Co*. was decided, the Legislature amended section 1714.10. The initial version of the proposed amendment would have made section 1714.10 applicable only to conspiracy allegations against attorneys and clients that were based on the Insurance Code. (*Pavicich, supra*, 85 Cal.App.4th at pp. 392-393.) "Further analysis, however, alerted the drafters to the decision in *Doctors' Co*. . . . The bill's author also reasoned that 'existing case law makes it impossible to sue anyone under Section 790.03, [therefore] the need for a pleading hurdle for actions against attorneys under that section has been effectively negated.' [Citation.]" (*Pavicich, supra,* 85 Cal App.4th at p. 393.) The legislature ultimately decided to amend the statute "to apply when an attorney engaged in a civil conspiracy with his or her client "'arising from any attempt to contest or compromise a claim or dispute,'" and "to except from the statute's scope the two situations detailed in *Doctors' Co*." (*Pavicich, supra,* 85 Cal.App.4th at p. 393.)

After detailing the history of section 1714.10, the *Pavicich* court concluded that the exceptions in section 1714.10, subdivision (c) "have the effect of exempting any viable attorney-client conspiracy claims from section 1714.10's requirements."

(*Panoutsoloulos, supra*, 157 Cal.App.4th at p. 304.) In *Berg, supra*, 131 Cal.App.4th at page 818, the Sixth District further explained, "As we observed in *Pavicich*, the effect of [the 1991 amendment to section 1714.10] is anomalous. Since the statute now removes from its scope the two circumstances in which a valid attorney-client conspiracy claim may be asserted, its gatekeeping function applies only to attorney-client conspiracy claims that are not viable as a matter of law in any event. [Citing *Pavicich, supra*, 85 Cal.App.4th at pp. 394–396.] Thus, a plaintiff who can plead a viable claim for conspiracy against an attorney need not follow the petition procedure outlined in the statute as such a claim necessarily falls within the stated exceptions to its application."

"This conclusion arises from two legal principles and their impact on the development of section 1714.10. A conspiracy cause of action cannot lie 'if the alleged conspirator, though a participant in the agreement underlying the injury, was not personally bound by the duty violated by the wrongdoing and was acting only as the agent or employee of the party who did have that duty.' " (*Panoutsopoulos, supra*, 157 Cal.App.4th at p. 304, quoting *Doctors' Co., supra*, 49 Cal.3d at p. 44.) This is because, " 'under the agent's immunity rule, an agent is not liable for conspiring with the principal when the agent is acting in an official capacity on behalf of the principal.' [Citations.]" (*Pavicich, supra*, 85 Cal.App.4th at p. 394.) Thus, "the only viable claims for an attorney's civil conspiracy with a client are claims that an attorney, conspiring to cause a client to violate a statutory duty peculiar to the client, acted not only in the performance of a professional duty to serve the client but also in furtherance of the attorney's financial gain [citation], or claims that the attorney violated the attorney's own duty to the plaintiff

[citation]." (*Panoutsoloulos, supra*, 157 Cal.App.4th at pp. 304-305, citing *Doctor's Co., supra*, 49 Cal.3d at pp. 46-47.)

The *Pavicich* court considered the Legislature's decision to include the two exceptions as a means of exempting from the statute's scope the situations described in *Doctors' Co., supra*, 49 Cal.3d 39. (*Pavicich, supra*, 85 Cal.App.4th at pp. 393-394.) The *Pavicich* court explained:

> "Section 1714.10's procedural hurdle seems aimed at situations where the attorney is acting in his or her official capacity. This is indicated by the statute's legislative history and the Legislature's concern with conspiracy actions designed to 'disrupt' the attorney/client relationship. It is also demonstrated by section 1714's words. In particular, section 1714.10, subdivision (a) refers to actions against an attorney for conspiring with his or her client that arise from 'attempt[s] to contest or compromise a claim' and that are 'based upon the attorney's representation of the client.'
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> "Yet when an attorney is acting in his or her official capacity, there are only the situations articulated in *Doctors' Co*., in which an attorney could be liable for conspiring with his or her client. Of course, these situations are specifically excepted from section 1714.10's scope.
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> "To be sure, an attorney, acting in the scope of his or her official duties, and not for individual gain, can be liable to third parties in certain circumstances. But those circumstances will always require that the attorney have a duty to the third party. For example, if an attorney commits actual fraud in his dealings with third parties, the fact that he did so in the capacity of attorney does not relieve him of liability. [Citations.] Similarly, where an 'attorney gives his client a written opinion with the intention that it be transmitted to and relied upon by the plaintiff in dealing with the client[,] . . . the attorney owes the plaintiff a duty of care in providing the advice because the plaintiff's anticipated reliance upon it is "the end aim of the transaction." [Citation.]' [Citations.]" (*Pavicich, supra*, 85 Cal.App.4th at pp. 394-395.)

"Applying section 1714.10 thus requires the court to initially determine whether the pleading falls either within the coverage of the statute or, instead, within one of its stated exceptions. This determination pivots, in turn, on whether the proposed pleading states a viable claim for conspiracy against the attorney. [Citation.] For all intents and purposes, this is the determinative question. If such a claim is stated, the analysis ends before reaching evidentiary considerations; the statute does not apply because the claim necessarily falls under one of its exceptions. If it is not stated, the analysis likewise ends, but with the opposite result; the pleading is disallowed for its failure to meet the initial gatekeeping hurdle of the statute." (*Berg, supra,* 131 Cal.App.4th at p. 818.)

C. *The trial court correctly overruled Blake's special demurrer based on section 1714.10*

"In reviewing an order overruling a demurrer, we accept as true all properly pleaded facts in the complaint and exercise independent judgment to determine whether the complaint states a cause of action as a matter of law." (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 373.)

The "determinative question" in applying section 1714.10 is, as the *Berg* court identified, "whether the proposed pleading states a viable claim for conspiracy against the attorney." (*Berg, supra,* 131 Cal.App.4th at p. 818.) Blake complains that Najor is effectively claiming a conspiracy between Blake and Walker, that Najor simply deleted the word "conspired" from his amended complaint in an effort to circumvent the requirements of section 1714.10, and that this is insufficient to take Najor's claims outside of the scope of 1714.10. According to Blake, "[t]he legislature did not leave open

the opportunity to plead around this important law," and there is no need for the word "conspiracy" to be attached to the causes of action for them to fall within the scope of section 1714.10. Najor contends that he is not suing Blake "for a cause of action based on conspiracy," and explains that he is suing Blake "for [Blake's] own affirmative conduct in acting to hinder, delay or defraud a creditor . . . ."

We agree with Najor, and conclude that Najor's cause of action falls outside the scope of section 1714.10, even if the claim does suggest the existence of a conspiracy between Walker and Blake to defraud Najor. It is clear that Najor has alleged the existence of what may be considered an independent "duty" owed to him by both Walker *and* Blake, and not merely that Blake acted as Walker's agent in the alleged fraud.

Najor's amended complaint is based on the Uniform Fraudulent Transfer Act (§ 3439, et seq., UFTA or Act). Sections 3439.04 and 3439.05 of the Act set forth the situations in which a transfer may be deemed fraudulent.[5] For example, a transfer made with the actual intent to hinder, delay, or defraud creditors is fraudulent. (§ 3439.04, subd. (a)(1).) A transfer may also be fraudulent if the transfer is made without the transferring debtor receiving a reasonably equivalent value in exchange for the transfer, and the debtor either (1) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in

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[5] Section 3439.01 defines a "transfer" as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance." (§ 3439.01, subd. (i).)

relation to the business or transaction, or (2) the debtor intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due. (§ 3439.04, subd. (a)(2).) Under section 3439.04, subdivisions (a)(1) and (a)(2), it does not matter whether the creditor's claim arose before or after the transfer was made. A transfer may also be fraudulent with respect to a creditor whose claim arose before the transfer was made if the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer, and the debtor was insolvent at that time or became insolvent as a result of the transfer. (§ 3439.05.)

In determining whether a transfer was made with the "actual intent to hinder, delay, or defraud," the court may consider a non-exclusive list of eleven factors set forth in section 3439.04(b). The eleven factors include:

> "(1) Whether the transfer or obligation was to an insider.
>
> "(2) Whether the debtor retained possession or control of the property transferred after the transfer.
>
> "(3) Whether the transfer or obligation was disclosed or concealed.
>
> "(4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
>
> "(5) Whether the transfer was of substantially all the debtor's assets.
>
> "(6) Whether the debtor absconded.
>
> "(7) Whether the debtor removed or concealed assets.
>
> "(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

"(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

"(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

"(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor." (§ 3439.04, subd. (b).)[6]

These factors are not intended to "create a mathematical formula to establish actual intent. There is no minimum number of factors that must be present before the scale tips in favor of finding actual intent to defraud. [The] list of factors is meant to provide guidance to the trial court, not compel a finding one way or the other." (*Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 834.)

A creditor's remedies may include the voiding of a fraudulent transfer or an attachment against the asset. (§ 3439.07.)[7] "[A] fraudulent conveyance claim requesting

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6 The eleven factors were added to the statute in 2004. Pursuant to section 3439.04(c), the addition of the factors to section 3439 does not constitute a change in applicable law, but is instead declaratory of it and is not intended to affect prior judicial decisions interpreting the statute.

7 Section 3439.07 provides:

"(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 3439.08, may obtain:

"(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

"(2) An attachment or other provisional remedy against the asset transferred or its proceeds in accordance with the procedures

relief pursuant to Civil Code section 3439.07, subdivision (a)(1), if successful, may result in the voiding of a transfer of title of specific real property. By definition, the voiding of a transfer of real property will affect title to or possession of real property." (*Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 649 [concluding that "a fraudulent conveyance action seeking avoidance of a transfer" is "a real property claim for the purposes of the lis pendens statutes"].) Thus, the remedies provided in section 3439.07 directly affect the interest of a transferee, such as Blake, in the transferred property. It is for this reason that some courts have concluded that the transferee must be a party to the fraudulent conveyance action. (See *Heffernan v. Bennett & Armour* (1952) 110 Cal.App.2d 564,

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> described in Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure.
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> "(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, the following:
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> "(A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or its proceeds.
>
> "(B) Appointment of a receiver to take charge of the asset transferred or its proceeds.
>
> "(C) Any other relief the circumstances may require.
>
> "(b) If a creditor has commenced an action on a claim against the debtor, the creditor may attach the asset transferred or its proceeds if the remedy of attachment is available in the action under applicable law and the property is subject to attachment in the hands of the transferee under applicable law.
>
> "(c) If a creditor has obtained a judgment on a claim against the debtor, the creditor may levy execution on the asset transferred or its proceeds."

586 ["The transferee, in this case the appellant, is a necessary party in an action to declare a transfer void as fraudulent. [Citation.] The residue, if any, after the claims of creditors are satisfied, goes to him"]; see also *Liuzza v. Bell* (1940) 40 Cal.App.2d 417, 424.)

A transferee, however, has a defense to the action, in that "a transfer . . . is not voidable . . . against a person who took in good faith and for reasonably equivalent value or against any subsequent transferee or obligee . . . ." (§ 3439.08(a).)

Every person has a duty not to knowingly participate in a fraudulent transfer, including the transferee. A transferee who takes property "in good faith and for reasonably equivalent value" has met that duty, and, therefore, may prevent the voiding of the transfer. Najor has alleged that Blake knowingly participated in the fraudulent transfer and that Blake did not provide reasonably equivalent value in exchange for Walker's property. Najor has therefore sufficiently named Blake as a defendant in the action, and has established that he is not attempting to hold Blake vicariously liable for Walker's conduct, but, rather, is attempting to hold Blake liable for his own conduct in participating in the fraudulent transfer.

Blake contends that "[a]ny duty created by Civil Code section 3439.04 applies only to insolvent debtors." He relies on the fact that subdivision (a) of section 3439.04 requires that "the *debtor* [have] made the transfer or incurred the obligation . . . [¶] (1) With actual intent to hinder, delay, or defraud any creditor of the debtor." (Italics added.) Blake contends that because Najor has not alleged that Blake is a debtor or that he is insolvent, "there is no duty under this section."

Blake acknowledges, however, that "[a] transferee may . . . incur liability if he or she 'colluded' with the debtor in the transfer." He mistakenly assumes that this fact places such a claim squarely within the scope of section 1714.10 because "collusion is the essence of a civil conspiracy," and therefore Blake "could only subject himself to liability by engaging in actions that are a civil conspiracy." However, a transferee who colludes with a debtor to effectuate a fraudulent transfer violates the transferee's indendent duty to the defrauded creditor, such that the transfer may be voided as to the transferee, not just as to the transferring debtor. A transferee who has taken "in good faith and for a reasonably equivalent value" has not violated that duty and thus, the transfer may not be voided as to him or her.

A transferee who is alleged to have been a party to the fraudulent transfer by taking the property in bad faith, and without an exchange for reasonably equivalent value, is, essentially, alleged to have violated an independent duty not to engage in a fraudulent transfer. Thus, Najor has alleged that, independent of Blake's attorney-client relationship with Walker, Blake has violated his duty as the transferee not to engage in a fraudulent transfer of property. This falls within at least one, if not both, of the situations that are exempted from the scope of section 1714.10. Every person, attorney or not, has a duty not to participate in a fraudulent transfer of property.

We conclude that the trial court correctly overruled Blake's special demurrer based on section 1714.10.

D. *Blake's alternative arguments are not cognizable on appeal*

Blake argues, in the alternative, that the trial court should have sustained his demurrer to Najor's complaint on the ground that Najor failed to state a cause of action. According to Blake, Najor has failed to state a cause of action because the transfer of property by a client to an attorney cannot, as a matter of law, be a fraudulent transfer. Blake further maintains that there was adequate consideration for the transfer in this case, thus eliminating the possibility that the transfer was fraudulent. Finally, Blake contends that the litigation privilege "is an absolute bar" to Najor's action.

All of these arguments arise out of a general demurrer to Najor's complaint—a demurrer that the trial court overruled. "An order overruling a demurrer is not directly appealable, but may be reviewed on appeal from the final judgment. [Citation.]" (*Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 182.) We therefore conclude that Blake's arguments based on his general demurrer are not cognizable in this appeal.

Although Blake suggests that this court should consider his appeal arising from the overruling of his general demurrer to be a petition for a writ of mandate in the event that we conclude that he may not directly appeal from the court's ruling on his general demurrer, we note that an "[a]ppeal is presumed to be an adequate remedy and writ review is rarely granted unless a significant issue of law is raised, or resolution of the issue would result in a final disposition as to the petitioner. [Citation.]" (*Ibid*.) In our view, writ review is not appropriate in these circumstances. Blake's assertions can be adequately reviewed on appeal from a final judgment.

IV.

DISPOSITION

The order of the trial court overruling Blake's demurrer to Najor's amended complaint is affirmed. Respondent is awarded costs on appeal.

AARON, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.